

## **BOE DECISION HELPS POOR TAXPAYERS**

Led by the efforts of State Board of Equalization Member Claude Parrish, the BOE came to the rescue of poor taxpayers at its May 28 meeting by rejecting a staff argument that the state gets to keep the sales tax on cash lay-away charge refunded to a customer (*Appeal of Mervyn's*). At issue was \$1.7 million that Mervyn's had refunded to its lay-away customers.

It works like this: a customer places \$100 cash on a "lay-away" item as a deposit and also pays a sales tax (\$7.75 or more) on the item, plus a very small service fee. If a credit card is used for the deposit, no tax is charged. If the customer changes his or her mind, Mervyn's has been refunding the cash deposit and the sales tax. BOE staff argued that the state should keep the tax because the service fee was also not refunded.

Amy Silverstein, representing Mervyn's, pointed out that when the item is eventually sold, the state will get the sales tax. Mr. Parrish called the effort of the staff to keep the tax on the refunded amount totally unfair and perhaps unconstitutional.

He noted that people who use charge cards for the deposit do not have to pay the sales tax, but the poor who don't have credit cards would be required to pay a sales tax on an item they did not purchase, under the staff interpretation.

When the case was heard, Mr. Parrish, who is BOE vice-chair, was presiding as BOE Members John Chiang and Carole Migden were not in the room.

Mr. Parrish's motion to hold for the taxpayer carried by a 2-1 vote, with Mr. Parrish and BOE Member Bill Leonard voting yes. Marcy Jo Mandel, on behalf of Controller Steve Westley, voted to allow the state to keep the sales tax refunds of cash "lay-away" deposits.

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